



VOSH PROGRAM DIRECTIVE: 02-020

ISSUED: January 15, 1994

SUBJECT: VOSH Response to Significant Events of Potentially Catastrophic Consequence

A. Purpose.

It is VOSH policy to respond as quickly as possible to significant events which may affect the health or safety of employees.

1. This response requires the on-site presence of top agency officials as well as compliance personnel. Additionally, the agency is committed to establishing effective and on-going lines of communication with all affected parties.
2. It is VOSH's policy to ensure that each significant event is thoroughly and promptly investigated and that all necessary resources be devoted to such investigations.
3. The objective of an investigation conducted pursuant to this instruction is to determine the likely cause of the event.
4. For purposes of this instruction, a "significant event" is defined as an event designated by the Commissioner as significant, including occupationally-related incidents involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or one which presents potential worker injury and generates widespread media interest (VOSH/Regional response in the event of a natural disaster is not addressed in this directive.)

B. Scope.

This Program Directive applies VOSH-wide.

C. References.

1. OSHA Instruction CPL 2.45B, Revised Field Operations Manual (FOM), including CH-1 through CH-3, June 15, 1992.
2. OSHA Instruction CPL 2.80, October 21, 1990, Handling of Cases to be Proposed for Violation-By-Violation Penalties.
3. OSHA Instruction STP 2.22A, State Plan Policies and Procedures Manual, including CH-1 through CH-3, February 27, 1990
4. OSHA Instruction CPL 2.94, July 22, 1991.

D. **Cancellation.**

Not Applicable.

E. **Action.**

The Deputy Commissioner, VOSH Directors and Regional Directors shall ensure that the policies and procedures explained in this directive are implemented by all compliance personnel.

F. **Effective Date.**

January 15, 1994

G. **Expiration Date.**

Not Applicable.

H. **Background and Summary.**

1. VOSH's investigation of workplace conditions which cause, or could cause, catastrophes resulting in multiple loss of life and significant property damage is the agency's highest enforcement priority. Accordingly, VOSH must ensure that its efforts are well focused during these complex investigations.
2. Federal OSHA has learned from its recent investigations of such catastrophic events as the L'Ambiance Plaza building collapse and the Phillips 66 Company explosion that there are common elements present in all successful investigations that ensure their efficiency and effectiveness. These instructions were developed to assist VOSH's field personnel in the orderly investigation of these unpredictable events.
3. Significant events of potentially catastrophic consequences may also be addressed by elements of the National Contingency Plan (NCP) (40 CFR 30), the basic rules for federal emergency planning, preparation and coordination. The NCP (Section 300.120) provides for an On-Scene Coordinator (OSC) who is responsible for directing response efforts and coordinating all other Federal efforts at the emergency scene. The EPA usually provides the OSC for emergencies on land while the Coast Guard provides the OSC for emergencies on water. The NCP also establishes the National Response Team (NRT), the Regional Response Teams (RRT) and charges these groups with responsibility for emergency planning, preparation, and response. The NCP names OSHA as a member of the NRT and states that OSHA "on request" will provide advice and technical assistance to NRT/RRT agencies during emergencies. (See Section 300.175). Technical assistance may include review of site safety plans and work practices; assistance with exposure monitoring, providing MSDS's, giving advice on personal protective equipment, and help with compliance questions. The NCP gives OSHA a limited role during catastrophic

events and it has been OSHA's policy not to engage in activities that would have the effect of impeding the emergency response.

4. The Occupational Safety and Health (OSH) Act and the Virginia State Plan require that VOSH respond to catastrophic events, whether or not subject to the NCP. VOSH must be an active and forceful protector of employee safety and health during the clean-up, removal, storage and investigation phases of these incidents, while maintaining a visible, but limited role during the initial response phase. Catastrophic events are usually handled by state agencies, and local levels where the mayor, the local fire and police departments and perhaps the governor are in charge. When a federal presence is warranted and requested by VOSH, the preemption of local authorities may generate dissension or hostility which are counter-productive to the investigation. Communication and coordination by OSHA and VOSH with local agencies during their response to catastrophic events becomes crucial for operational as well as political considerations.

I. **Procedures.**

In the investigation of significant events, the policies and procedures given in the VOSH FOM, should be followed, except as identified in this program directive.

Carol Amato
Commissioner

Attachment: VOSH Response to Significant Events of Potentially
Catastrophic Consequence

Distribution: Commissioner of Labor and Industry
Assist. Commissioner - Enforcement
Assist. Commissioner - Training & Public Services
Directors and Supervisors
Consultation Services Staff
Training Staff
OSHA Regional Administrator, Region III

APPENDIX

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APPENDIX

Checklist for Investigation Procedures during a Significant Event of Potentially Catastrophic Consequence:

1. PREPARATION FOR INVESTIGATIONS OF SIGNIFICANT EVENTS

a. Training.

(1) Refresher Training on Procedures in this Directive.

This will be provided at least annually. **[Per agreement, Virginia Department of Emergency Services (DES) will include designated DOLI employees in DES training programs.]**

This will include:

- S Mock Catastrophic Event Investigation
- S Investigation Plan Development
- S Overview of:

- 1. OSHA activities pursuant to NCP
- 2. RRT Activities
- 3. Interagency Coordination

(2) Training for CSHOs.

The Deputy Commissioner shall ensure that CSHOs (specialists, as per §1910.120) will receive training (and/or demonstrate competence) at least once a year.

(3) “Experts” Check List.

Individuals with specialized skills or expertise may expedite the investigation. Therefore, the Deputy Commissioner shall ensure that a skills/expertise profile of regional personnel be maintained by the Compliance Directors (or their designees) as a basis for selecting investigation staff for significant events.

The list should include CSHOs with advanced training in (for example):

- S Hazardous waste operations
- S Emergency response
- S Chemical Industry emphasis program
- S Construction courses involving training on catastrophic Potential

b. Resources.

Compliance Directors shall ensure that Regional Offices have access to all equipment for investigating the hazards commonly found in the workplace. Such equipment includes emergency testing equipment or special accident investigation instruments, communication equipment, and personal protective equipment. Also, specialized technical equipment, as determined by the Department of Emergency Services (DES), can be provided on-site at a significant event within 24 hours.

Regional Supervisors shall ensure that adequate personal protective equipment for CSHOs is available. Most of it is stored in Regional Offices. This equipment includes, but is not limited to, respiratory devices, protective clothing, as well as head, eyes, ears, face and foot protection.

Each CSHO shall be trained in the proper care, use, and limitations, of the personal protective equipment (PPE).

PLEASE NOTE: If additional PPE is necessary, it must be obtained prior to exposure. Under no circumstances shall a CSHO be unprotected from any hazard encountered during the course of the investigation.

The Deputy Commissioner shall determine the availability of qualified consultants for the various types of anticipated events. A listing of consultants and their specialties shall be maintained and updated annually. Preliminary contact with these consultants shall include discussion of items such as expertise, cost, availability, confidentiality, etc.

Availability and expertise of testing laboratories shall also be identified.

Utilization of the expertise of Federal OSHA's Office of Construction and Engineering or Directorate of Technical Support should be coordinated through the Deputy Commissioner or the Office of Legal Support Director as should requests for support from other off-site State and Federal agencies.

4. INITIAL RESPONSE/VERIFICATION

a. Whom to Notify

A VOSH employee who has been notified of a catastrophic event has the duty of notifying the **Regional Director** (who will in turn inform the **Compliance Director**). As an aid to passing information quickly (since VOSH's policy is to respond to significant events as quickly as possible), off-duty telephone numbers for the following personnel shall be maintained and available for use by the Regional Directors, Compliance Directors and the Deputy Commissioner for Enforcement 24 hours a day:

- 1 Commissioner
- 2 Deputy Commissioner
- 3 Compliance Division Directors
- 4 Regional Directors
- 5 Office of Legal Support
- 6 Lead Agency Management Analyst
- 7 Fatality/Catastrophe Investigation Teams*
- 8 Assistant Attorney General(s) assigned to the Department of Labor and Industry

Regional Directors shall ensure that during OFF DUTY HOURS, Team members will have ready access to Regional Offices in order to get at equipment and supplies necessary for an accident investigation.

b. Gathering Initial Information

(1) OSHA-36 FORM:

The VOSH person who receives word of the catastrophic event must fill out the OSHA-36 Form (*after* reporting the event by telephone to the Regional Director).

(2) Source of Report:

The source of the initial report is in two categories: Either it comes from the Employer, or it does not.

IF THE REPORT IS RECEIVED FROM THE EMPLOYER, the person receiving the report shall obtain the following information (where possible):

- S Current Status of the Situation
(i.e., whether a continuing hazard is present);
- S What the Company is doing to protect employees still on the site;
- S Area or location of incident in relation to neighboring plants, storage areas, or residential areas; and
- S Other governmental agencies on the site, including the identification of the “lead” agency (i.e., Federal EPA, Department of Emergency Services, Fire Department, etc.)

IF THE REPORT IS RECEIVED FROM A SOURCE OTHER THAN THE EMPLOYER, the person receiving the report will include as much of the above information as possible. At this point the **Regional Director** is usually involved in collecting information, and may turn to additional sources, such as:

- S Hospitals
- S Television Stations
- S Radio Stations
- S Newspapers
- S Other Governmental Agencies *

* Please Note that if the above sources prove inadequate to the information-gathering process, the Employer may be contacted. *Once the employer is contacted, this constitutes prior notice*, as per Chapter VI of the VOSH FOM.

e. Dispatching Safety Personnel

As specified above, immediately upon receipt of notification of a catastrophic event, the **Regional Director** shall notify the **Compliance Director**. Next, the Regional Director *or* the Compliance Director shall assemble and dispatch the Fatality/Catastrophe (FAT/CAT) Investigation Team to the site using available safety personnel in order to both obtain information for the OSHA-36 Form and establish an agency presence.

d. Gathering Additional Information

Having dispatched safety personnel, the Regional Director shall give the Compliance Director as much of the following information as possible:

- S Location of accident, including county and zip code;
- S Company or companies involved, and type of business;
- S Type of incident (structural collapse, chemical release, etc.)
- S Date and time of event;
- S Number of persons killed, injured or unaccounted for;
- S Status of rescue operations;
- S Whether an Agency representative is on-site or en route;
- S Person(s)/Agency(ies) in control of site;
- S Other organizations/agencies on site;
- S Telephone numbers of all parties on site; and
- S Other significant information and sources of such information.

e. Additional Notes on Notification

As stated above, the **Regional Supervisor** (or his designee) will notify the **Compliance Director** of a catastrophic event. The Compliance Director will then notify the **Deputy Commissioner**. The Deputy Commissioner will then inform the **Commissioner**. (In the event that the Deputy Commissioner cannot be reached, the Compliance Director will notify the Commissioner directly.

The Regional Supervisor, in making his initial report to the Compliance Director, shall inform the Compliance Director of the need to implement the procedures contained in this Program Directive.

The Regional Supervisor or Compliance Director shall assess the need for a Team Investigation of the incident.

6. INITIAL ON-SITE INVESTIGATION ACTIVITIES

a. VOSH Representative's Role

Upon arrival at the incident scene, the VOSH representative [Team Chief (Safety Lead Inspector, Senior Safety Inspector or Senior Industrial Hygienist)] and Special Fatality Investigator, dispatched by the Regional Director (if necessary) shall establish contact with the employer and on-scene Incident Commander as soon as possible. For incidents subject to the NCP, the VOSH representative shall also contact the Federal on-scene coordinator and provide technical assistance, as deemed appropriate. The opening conference may be delayed only if management is engaged in rescue or emergency response activity.

b. Team Leader's Role

During emergency response activities, the Team leader shall be available to provide assistance to responders through consultation with the on-scene Incident Commander, or designee. There may be safety and/or health concerns about entry into the accident area, and therefore, changes in the accident scene may be necessary in order to make the area safe.

c. Use of a Video Camera/Tape Recorder

VOSH representative first on the scene shall use a video camera to document all characteristics of the event. Continued extensive use of the video camera is recommended throughout the initial stages of the investigation since conditions can change rapidly in such emergency situations. This documentation may later prove invaluable in determining the cause of the accident. A Team member shall provide a voice-over narrative to describe what is being taped as the videotape is being recorded. Use of audio tape recorders early in the investigation is also encouraged. Audio tapes may be transcribed once the site is stabilized.

d. Role of Compliance Director

If terrorist or criminal activity is suspected, the Compliance Director shall ensure the security of VOSH personnel. The Compliance Director shall contact the Virginia State Police with pertinent information as soon as possible.

4. VOSH'S ROLE IN ENSURING PROTECTION OF EMERGENCY RESPONDERS

Reserved - Awaiting Federal guidance.

5. COORDINATION OF VOSH ACTIVITIES WITH OTHER ON-SITE AUTHORITIES

a. Local Authorities

VOSH response to emergency situations must be thought through carefully where other authorities are concerned because although VOSH can often utilize reciprocal support from them, it must be kept in mind that *local authorities have primary legislated roles in providing emergency response to ensure protection of lives and property.*

b. Federal Authority

Federal authority pre-empts VOSH authority. Thus, in instances where catastrophic events are covered by the National Contingency Plan (NCP), federal governmental agencies, namely, Environmental protection Agency (EPA), Nuclear Regulatory Commission (NRC), U.S. Army corps of Engineers, or the Coast Guard, may exercise management and control in situations involving emergency response and hazardous waste sites.

The **Regional Director** (where applicable) shall consult with the Compliance Director and the Office of Legal Services Director to determine if the catastrophic situation falls under the purview of another State agency or that of the federal government.

If an Interagency Regional Response Team (RRT) is activated by the EPA or Coast Guard, all VOSH communication and coordination will go through VOSH's representative, designated by the Team Leader, to give technical assistance to the Incident Commander, to avoid further loss of life or property damage.

It is very important to remember that the presence of on-site VOSH personnel, if not properly managed, could complicate rescue operations, clean-up, or other emergency response activities.

VOSH personnel are not, in general, specifically trained or experienced in directing emergency response or serving as the Incident Commander, therefore:

- (1) Only those VOSH personnel who have received specialty training in emergency response, including advanced respirator use, may engage in on-site consultation activities regarding respiratory protection. Consultation shall be conducted through the **Incident Commander**, normally through the VOSH Site Safety Officer [see 1.7. c (1)].
- (2) All inspection duties during this phase of the investigation must be performed by compliance officers who have successfully completed all VOSH-required training courses (or their equivalent) as outlined in 29 CFR 1910.120(q).

6. CSHO PROTECTION DURING INITIAL PHASES OF INVESTIGATION

a. Caution Regarding Safety of VOSH Personnel

NO ENFORCEMENT ACTION, OR ACCIDENT INVESTIGATION ACTIVITY IS SO IMPORTANT AS TO PLACE THE LIFE OR HEALTH OF THE COMPLIANCE OFFICER IN DANGER.

During the initial phases of VOSH's response to a significant event, VOSH personnel may encounter hazardous conditions which present a significant risk to their safety and health. Among the potential hazards that may be encountered are: highly toxic atmospheric and surface contamination, including carcinogens the identity and concentration of which may not be known; explosive or corrosive atmospheres; confined spaces; and the potential for spontaneous generation of atmospheres immediately dangerous to life and health.

b. List of Precautions

The VOSH Team Leader shall ensure that the following precautions are taken:

- (1) Prior to entering a potentially hazardous area at the incident site, determine if any of the following prohibited entry categories may be encountered:
 - (a) Explosive or flammable substances are present in concentrations exceeding 10% of the lower explosive level (LEL).
 - (b) Site is on fire.
 - (c) Potentially hazardous unidentified substances are present, an adequate

determination of precautions of the safety or health of the CSHO.

- (d) Hazardous equipment and/or mechanical devices are operating and cannot be shut off and locked out, or pipelines cannot be isolated and/or shut off.
 - (e) Adequate personal protective equipment (PPE) is not available for protection against the contaminant or biohazard present or CSHO's are not fully trained in use of the PPE.
 - (f) Ionizing or non-ionizing radiation is present at levels which would result in exposures of VOSH personnel exceeding permissible exposure levels.
 - (g) Entry of pressurized chambers where decompression facilities are not available on-site.
 - (h) Presence of, or high probability of rapid generation of, atmospheres immediately dangerous to life and health.
 - (i) Structure or excavation is in danger of collapse or cave-in.
 - (j) Decontamination equipment is not available.
- (2) If any of the above conditions exists or is likely to occur during the course of an inspection, the Team Leader shall refer the particulars of the situation to the Regional Director or the Compliance Director. Entry into the hazardous area is prohibited unless entry is essential to the investigation and approval is granted by the Compliance Director.
 - (3) Where necessary, the Regional Supervisor shall discuss the hazardous conditions reported by the Team Leader with the Compliance Director and the Deputy Commissioner, prior to determining an appropriate course of action.
 - (4) **No VOSH compliance officers shall enter any area where Level A protection is required without specific approval by the on-site coordinator.**
 - (5) Inspection activity must be carefully planned to minimize the on-site time required, thus reducing potential exposure time.

7. TEAM INSPECTION PROCEDURES/REGIONAL OFFICE CONTINGENCIES

a. Inspection Teams

It may be necessary (depending on the scope and magnitude of the event) for the Regional Director or Compliance Director to assemble an inspection team to provide a comprehensive approach to the investigation. Members of an inspection team shall be selected based upon their experience and abilities. Recommendations to the Regional Supervisor for team members from outside the Region may be necessary.

It may be necessary to divide the inspection team into subgroups which address certain aspects of the investigation. For example, one group may investigate emergency response activity, another

may address system safety, while a third might address circumstances around the initial accident.

In the event an inspection team is subdivided, please note that:

- (1) each group shall have a designated leader to coordinate activity and interface with other groups.
- (2) each member of the inspection team must keep notes on a daily basis of his or her or her activity. The notes shall be placed in the case file.

The function of an investigation team is to conduct the VOSH investigation once the emergency response phase of the significant event has ceased. The team shall follow existing procedures as outlined in Chapter XIII of the FOM. In addition, the team shall:

- (1) Evaluate potential hazards at the site.
- (2) Contact family members of deceased or seriously injured.
- (1) Provide suitable progress reports to the Regional Supervisor and the Compliance Director.
- (2) Be present during physical evidence sampling or removal.
- (5) Gather witness testimony and obtain written interview statements.
- (6) Obtain and assemble copies of all needed reference documents.
- (7) Complete the necessary VOSH forms.
- (8) Compile the case file(s).

b. Investigation Team Leader (ITL)

A Director, Lead CSHO or Senior Industrial Hygienist from the responsible Regional Office shall normally be designated as the Investigation Team Leader (ITL).

- (1) The ITL is responsible for coordinating and directing the investigation and reporting findings to the Regional Director and/or Compliance Director on a daily basis, or more often, if critical information is obtained.
- (2) The responsibility of this role cannot be overemphasized for it is the ITL who acts as spokesperson for the agency in meetings with company, union, insurance, consultant, and other state and local agency officials.
- (3) The ITL must be aware of the direction and findings of other investigators as well as those of the team. Thus, the ITL's direct investigative work must necessarily be limited since much time and effort must be spent in effectively managing these coordinating functions.
- (4) The ITL must assimilate information from all sources and make prompt an accurate

decision regarding the utilization of resources which are at the leader's disposal and must promptly communicate needs and findings to superiors.

- (5) A concise chronology is an invaluable asset to this process and is therefore required. It must include not only events related directly to the incident but also brief notes on meetings, telephone conversations, video and audio recordings, and decision processes, including dates and times.
- (6) The ITL must also conduct daily planning sessions with the inspection team in order to be apprized of findings as well as to plan strategy and clearly communicate future investigative activities.

c. Specialized Assignments of Investigation Teams

The responsibilities of CSHOs and other team members are similar to those of any other team inspections. Specialized assignments, however, may be appropriate in some cases.

- (1) The CSHO shall be designated as the VOSH Site Safety Officer. This person will be delegated the primary responsibility of advising the ITL on the safety and security of VOSH personnel.
- (2) This specialist CSHO may also function as the primary technical advisor to those engaged in helping control the catastrophic situation. This CSHO must be assured direct access to the Incident Commander Safety Official at the scene. This CSHO shall report directly to the ITL.

The ITL shall specify the required personal protective equipment after consultation with the VOSH Site Safety Officer.

After the existence of an emergency situation has been confirmed and the need for an investigation team established, no Regional Office personnel shall leave for the scene without minimum protection and investigative equipment, as required by the VOSH FOM and specified by the VOSH Site Safety Officer.

- (3) An on-site Communications Officer (Public Services and Information Director) shall ensure rapid and accurate confirmation of information to the Compliance Director, Deputy Commissioner and Commissioner.
- (4) The Communications Officer shall coordinate all site communications and prepare ongoing and executive summaries of all communications and occurrences during the incident. This person shall be located at the VOSH command post.
- (5) Personnel from outside the Regional Office shall be assimilated into the team so as to conduct an effective investigation and to utilize their skills efficiently.
- (6) Team members shall be reminded to refer media inquiries and questions on inspection policies and procedures to the Public Services and Information Director. This is especially important for team members who are not agency or government employees, and,

therefore, may be unfamiliar with the operation and authority of VOSH.

d. Command Post

A "command post" must be established at or near the site to coordinate VOSH activities. (Per agreement, DES will provide a command post that DOLI is authorized to use in conjunction with DES.)

- (1) The Command post must be established as soon as it is determined that the significant event investigation procedures will be followed.
- (2) A government office or a hotel room is ideal for meetings, briefings, storing extra personal protective equipment, telephoning, etc.
- (3) In those cases where there is no available space, it may be necessary to use a vehicle as the on-site command post. In such circumstances, the vehicle shall always be at a specified location and shall have an identifying flag or pennant either mounted on the roof or flown from the radio antenna.

e. Office Supervision

After discussion with the Compliance Director concerning the scope of the investigation, the Regional Supervisor may decide, if necessary, to appoint a Senior Safety Inspector or a Senior Industrial Hygienist to handle normal office functions during the course of the inspection. The office staff shall be notified in writing concerning the status of office supervision.

f. Temporary Office Space

On extensive investigations, it may be necessary to provide adequate space on the site for compliance staff to review employer documents and diagrams, and to conduct interviews. (Per agreement, DES will provide equipment mentioned in f. (3) below, in conjunction with DOLI.)

- (1) If the situation arises where a company will not or cannot provide space for compliance officers to work, the rental of a mobile office, motel room or other working quarters may be necessary.
- (2) Regional Directors or ITL's shall investigate sources of temporary offices as part of their pre-disaster planning.
- (3) Office equipment needs may include the following:
 - (a) Telephone Service (wired and cellular).
 - (b) Copy Machine.
 - (c) Work Tables.
 - (d) Laptop (or larger) PC with modem.
 - (e) Automated Telephone Answering Machine.
 - (f) Fax Machine.

- (g) Locking File Cabinets.
- (h) Durable Tags for Identifying Evidence.
- (i) Office Supplies.

8. SITE CONTROL/COORDINATION

- a. Team leaders must get to the scene of the catastrophe as soon as possible after it has occurred.
 - (1) The Regional Director and/or Team Leaders shall ensure that the following pre-inspection actions are accomplished:
 - (a) Assess the extent of damage and personal injury;
 - (b) Establish appropriate security and isolation of the area involved.
 - (c) Obtain the cooperation of company and coordinate with other response officials involved, especially the on-scene Incident Commander, in order to proceed in an orderly and efficient manner,
 - (d) Evaluate any remaining hazards.
 - (e) Begin documenting (videotaping or sketching and photographing when a video camera is not available) the accident scene.
 - (f) Develop protocol for conducting the investigation.
 - (g) Identify all potential witnesses to the accident.
 - (h) Evaluate operating conditions just prior to the accident.
 - (i) Make a preliminary estimate of the accident cause.
 - (2) The team members' initial actions shall be carefully considered. Rather than rushing out and examining evidence immediately, they shall allow time for briefings by the senior officials of the operating organization. The investigators' main interest at this time is to establish a cooperative working relationship with the employer's representative(s).
- b. It is most important to coordinate VOSH's activities with other responders to establish jurisdiction and ensure control of the site.
 - (1) The team leader shall make every effort to obtain information from these responders (and exchange information with them to the extent permitted by procedures).
 - (2) Federal, local or other state agencies may also be involved in investigation, rescue or recovery, or clean-up activities. The team leader shall contact the principal representative and establish a cooperative arrangement.
 - (3) While VOSH cannot abrogate its responsibility in favor of another agency, every effort

shall be made to cooperate in obtaining and exchanging information.

- (4) The team leader shall determine whether the state or the local government authorities are on site to investigate the accident. Contact with such authorities shall be made as quickly as possible by the team leader to arrange for control of the site.
- c. On a large inspection site, one primary employer contact shall be identified to accompany the inspection team on walkaround activities. This person need not be the most knowledgeable person in plant operations, but must be familiar with the area and able to contact appropriate company and union personnel as necessary. The primary employer to contact must be available for investigation activities at all appropriate times, so as not to hinder the investigation.
- d. If an employer refuses VOSH access to the accident site, the CSHO shall inquire and document the reason. The CSHO shall immediately contact the Regional Director and provide him all available information.
- (1) The CSHO shall continue offsite inspection activity including gathering information from agencies, taking photographs and video taping the scene from a public area, and interviewing witnesses offsite while the warrant is being prepared.
 - (2) If entry is refused, the procedures for dealing with the refusal shall be followed, but every effort shall be made to expedite the process; e.g., telephone communications shall replace written requests, where possible. (Any consultant projected to be used during the inspection shall be included in the warrant application.)
 - (3) If it is determined that a warrant will be sought, the OLS director, with approval of the Deputy Commissioner shall proceed according to guidelines and procedures established in the state for warrant applications.
 - (4) If the employer or other parties refuse to give access to records, the CSHO shall carefully document what records are at issue, why they are needed, who has custody of the records, who refused access, and when the refusal occurred.
 - (5) This information shall be immediately transmitted to the Regional Supervisor who shall notify the OLS Director to determine whether a warrant is appropriate.
 - (6) The OLS Director shall consult with the Assistant Attorney General to determine whether to seek an inspection warrant or to initiate legal proceedings.
 - (7) The OLS Director shall contact the Deputy Commissioner and the Commissioner to begin the process of serving interrogatories, where necessary.
 - (8) It may be necessary to obtain an administrative warrant for records, documents, or other physical evidence.
 - (9) If a witness refuses to be interviewed or to give a statement, the CSHO shall document the person's name, address, title and information pertinent to the inspection which that person may have.

- (10) This refusal, and the information obtained, shall be transmitted immediately to the Regional Director and the OLS Director who shall consult with the Assistant Attorney General to determine the appropriate course of action that should be taken.
- e. VOSH presently has no regulation to require an employer or any other authority to limit access or prohibit removal or disturbance of material which may constitute physical evidence at a worksite.
 - f. The team leader shall decide, even in the presence of police security, whether it is necessary to place the site under 24-hour-a-day observation. Assistance of the on-scene Incident Commander shall be obtained if possible. Such observation must continue until all necessary physical evidence is obtained.
 - (1) The need for this observation is two-fold. It reduces the likelihood of further injuries to personnel, and it prevents the removal of equipment and debris from the accident area, thereby ensuring the evidence is not tampered with or inadvertently destroyed.
 - (2) If it appears that either lack of site control, material alterations, or removal of material will interfere with the VOSH investigation, the team leader shall notify the Regional Supervisor who shall contact the Compliance Director and the OLS Director to get an appropriate court order.
 - (3) The OLS Director shall consult with the Assistant Attorney General to determine an appropriate course of action. In no case shall a VOSH representative attempt to exert authority without such an order.
 - (4) The representatives of other agencies may have a need to remove material and/or to search for missing physical evidence. In addition, during rescue/recovery operations, much of the physical evidence may be removed, displaced, or destroyed.
 - (5) Therefore, it is imperative that every effort be made as soon as possible, to establish site control and preserve the physical evidence by coordination with the agencies on the site, especially the on scene Incident Commander, as well as those which will be involved later.
 - g. VOSH's jurisdiction may be preempted by another state or Federal agency under Section 4(b)(1) of the federal Occupational Safety and Health Act. In such cases, the guidelines given in the FOM, shall be observed with the following special considerations:
 - (1) If it is reasonably possible that VOSH has coverage, the Regional Supervisor shall start the investigation at once and not let potential problems interfere with either notification to the Compliance Director or with the investigation.
 - (2) The Compliance Director, in consultation with the OLS Director and the Attorney General's Office, shall determine as quickly as possible whether VOSH has jurisdiction over the worksite in question.
 - (3) Where it is likely that VOSH authority is preempted, such as coal mine accidents, no investigations shall be conducted. The Regional Supervisor shall be notified of these incidents and technical assistance shall be offered to the responding agency if so directed

by the Incident Commander.

- h. Inevitably, circumstances will arise that are not covered by the preceding sections of this instruction. The Compliance Director shall be alert to these unusual circumstances so that proper action can be taken and their occurrence will not hinder the investigation.
 - (1) Va. Code sections 40.1-49.8 and 40.1-49.9 authorize the agency to seek a warrant in advance of any attempted inspection if circumstances are such that "Preinspection process is desirable or necessary." Issuance of anticipatory warrants is addressed in the FOM, Chapter VI.
 - (2) In the event of a denial of entry occurring on a weekend, the CSHO shall contact the Regional Supervisor who then contacts the Compliance Director who contacts the Deputy Commissioner and the OLS Director. After consulting with the Deputy Commissioner, the OLS Director will consult with the Assistant Attorney General to determine if a warrant is needed prior to the following Monday. If so, the OLS Office shall obtain a warrant as quickly as possible.
 - (3) To facilitate this process, the Assistant Attorney General shall attempt to contact the Commonwealth's Attorney for the jurisdiction in question to determine if a warrant can be obtained. If so, the OLS office will prepare the warrant for the Commonwealth's Attorney to present to the appropriate judge.
- i. Use of Temporary Restraining Order.

S Reserved- Awaiting federal guidance.

9. EVIDENCE

The inspection team shall ensure, to the fullest extent possible, that all evidence at the event site remains undisturbed until VOSH has had an opportunity to document, examine, and inspect it.

- a. VOSH, as a state agency program, cannot claim precedence over other non-state investigators nor assert the right to remove evidence or obtain samples first.
- b. In the past, the employers and other public sector investigators have been cooperative in controlling the site by limiting access of personnel and prohibiting unauthorized removal of material from the site.
- c. The Inspection Team Leader shall attempt to negotiate an agreement with the employer or other controlling authority not to disturb any evidence involved in the significant event without VOSH consent and negotiate a written agreement regarding preservation of all evidence in the accident area. The following basic elements shall be addressed in the initial agreement:
 - (1) Designation of the specific area subject to the agreement;
 - (2) How the area will be secured; i.e., fenced with one gate to be secured with locks from all parties, 24-hour surveillance, etc.;

- (3) Mutual agreement not to tamper, alter or change any object within the designated area;
- (4) Scope to be given to search and rescue operations;
- (5) Provision under which actions may be taken in the interest of safety and health and for notifying VOSH of action taken;
- (6) Preservation of any object already moved at time of agreement so that it is preserved in accordance with the agreement;
- (7) Circumstances under which evidence may be disconnected, videotaped, photographed, marked, moved, repositioned, or removed from the site; and
- (8) Timeframes by which all parties will submit proposals for testing, removal, and preserving equipment; and any other timeframes needed.

d. Handling of Physical Evidence

Agreements shall also be sought with other investigators about the sampling order or removal/alteration order for physical evidence. There shall be agreement as to which agency or organization will remove evidence or take samples first and which agency or organization will accept the analysis of another or can use the same information as another.

e. Protocol for Equipment Testing

A separate supplementary-agreement shall be sought specifically dealing with the protocol for examining and/or testing equipment. The following items shall be addressed:

- (1) Prohibition against alteration of equipment in any manner until all significant items in the plant have been documented to each party's satisfaction;
- (2) Specific dates by which identifying and diagramming the location and condition of all pertinent equipment will start, and how equipment is to be identified;
- (3) Provisions for other parties to be present and observe the documentation process;
- (4) Specific dates and times within which VOSH will identify equipment and other items to be removed, preserved and/or tested;
- (5) Circumstances under which the employer and other parties may conduct appropriate tests;
- (6) Circumstances under which results, data, and information obtained as a result of testing will be shared with the employer, the union and other interested parties;
- (7) Circumstances under which items identified by VOSH shall be removed, and once removed, how they will be stored and secured; e.g., within enclosed, covered area with one means of access; and

- (8) Access to the secured storage area.
- f. Upon completion of the immediate firefighting or other damage suppression activity, the scene shall be left undisturbed to the maximum extent possible until the investigation team arrives.
- (1) Team members shall identify material and possible witnesses to the event during the earliest phases of the investigation. Plans must also be formulated at that time to identify further physical evidence needs.
 - (2) Evidence must have a "chain of custody," (i.e., proof of an unbroken series of possession from the taking of the item, to its testing, and then its exhibition) to be admissible in court; also the site of the incident must remain as undisturbed as possible for causative factors to be established.
 - (a) Once the required evidence has been identified, the chain of custody must be established.
 - (b) The evidence must be physically identified by either describing identifying markings or characteristics, or by marking the item directly. Videotaping or photographing of physical evidence, prior to and after marking, is recommended.
 - (c) Whatever identifying method is used, it must be durable and must not alter the specimen.
 - (3) Where equipment has to be removed to eliminate remaining hazards, a record shall be made of such action taken.

NOTE:

Photographs or video recordings will be useful both as a record and a basis for analysis. By including a good photographer with the first entry of the teams, the investigators ensure that a record is made of much valuable evidence. The investigation of the circumstances surrounding the accident is a methodical accumulation of small bits of information which eventually form a pattern of evidence which is necessary for the determination of the cause. It is recommended that another team member accompany the photographer to log, identify and document the photographs as they are taken.

- (4) Evidence shall be systematically collected. The following guidance in the collection of needed information/data is provided:
 - (a) What was the building or structure like before--materials of construction, floor plan, etc.? Does the employer have an "as built" drawing?
 - (b) What was the overall layout before the accident and after it? Aerial photographs of the site, before and after the incident, often provide very helpful information concerning the cause of an accident, especially explosions.
 - (c) After explosion, pertinent information would include size and composition of material, distance traveled, where an object stopped and what stopped it. This generally will require immediate records of the accident site; photographs and

measurements must be made before the site is disturbed.

- (d) Particular attention should be given to the location of stray parts of equipment dislodged during the accident. Each item when correlated with other findings may lead to an explanation of the origin of the accident.
 - (e) What are the names and addresses of survivors, eyewitnesses, and persons familiar with the material or equipment involved? Of what assistance can they be in reconstructing the sequence of accidents/ events?
 - (f) What was the position of fatally injured employee(s) and survivor(s), both before and after the accident? What operations were they performing?
 - (g) What operations were being conducted at the time of the accident? Were they routine? Are there written procedures, drawings, checklists, and quality assurance monitors? Are there any drawings or photographs? Are chemicals involved and will any sampling or analysis be required?
 - (h) What had occurred before the accident? Were there any deviations or changes in procedures? Had anyone said there would be or had been a problem? Did anything unusual or strange occur?
 - (i) Had any piece of equipment in the area of the accident experienced frequent or abnormal mechanical problems prior to the accident? Was an error made and then corrected or covered up? Had anyone complained about some event or condition related to or similar to the accident?
 - (f) Were materials in use at the time of the accident the same as those that had been used previously? Had there been a new shipment received? Were materials taken from an old container?
 - (k) Were new (or old) tools being used? Were the parts/materials used those specified in the procedure/drawings? Does the supplier need to be contacted? Will copies of contracts or specifications be necessary? Will material analysis or testing be required?
 - (l) Was there any advance training? Were there any unusual conditions that might warrant special training? Was there a written standard operating procedure available? Was there a check or audit to ensure it was followed?
- (5) The accumulation of useful evidence follows a random pattern, but the inter-relationships of various findings are often significant. A meeting at the end of the day by each team to review the day's results is an effective means of exchanging information.
- (6) Each investigation has only limited resources that can be devoted to it. The expenditure of continued effort at each step of the investigation must be weighed against the anticipated results.

- (12) The orderly documentation of evidence is a prime factor for a successful investigation. Although possible causes of the accident may be advanced during the on-site fact finding portion of the investigation, final analysis and evaluation is best performed at the investigating team's office after all facts have been collected and analyzed.
 - (a) In the analysis of an accident, it may be helpful to outline a step-by-step sequence of each possible accident scenario based on evidence found.
 - (b) If an "evidence gap" is found, (i.e., missing piece(s) of evidence) then additional information is needed.
- (8) Some time should also be devoted to evaluating the facility's emergency procedures for their effectiveness during the accident. It is possible several useful revisions may be recommended.
- g. Photographs taken during the inspection shall be mounted and identified by the team member taking them as soon as they are received. If mounting is not possible, each photograph shall be identified on the back to indicate what it shows, and when, where, and by whom it was taken.
- h. Photos of areas of interest taken prior to the incident shall be obtained if possible.
 - (1) EPA or other similar agencies may take aerial photos to identify potential chemical spills; if so, EPA's aerial photos shall be obtained.
 - (2) Videotaped news clips taken during the event showing actual footage of the fire or subsequent explosions shall also be obtained.
 - (3) The need for VOSH contracted aerial photography shall be evaluated.

10. COMMUNICATIONS.

Effective communication is especially important during these investigations.

- a. The following communications equipment should be considered depending upon the circumstances which arise during the investigation (**Per agreement, DES will provide communications equipment that DOLI is authorized to use in conjunction with DES.**)
 - (1) Walkie-talkies are available from the Regional Office. Compliance officers conducting the catastrophe inspection may be able to coordinate walkie-talkie use with the police or other government agencies.
 - (2) Pagers for key personnel are available from the Regional Office or can be rented from commercial sources.
 - (3) Mobile (cellular) phones are particularly useful to maintain communication with the regional and central offices.

- (4) Portable Telefax equipment can greatly assist off-site information dissemination.
- (5) Portable photo copy units shall be available whenever necessary on site.
- (6) A portable microcomputer with modem shall be available on site for use by the team in preparing the accident investigation report as well as direct transmission of information.
- (7) Access by telephone is imperative in order to communicate with the Compliance Director and the Regional Office. If the team is stationed in an office space on the site, access to the employer's telephone may be sufficient.
 - (a) In the event that the VOSH control site/room is a leased space, such as a trailer, it may be necessary to obtain telephone service through requisition.
 - (b) In addition to the items above, a cellular phone will prove most useful to maintain contact with on-site team members, the Compliance Director and others.
- b. A status report of the inspection shall be sent to the Compliance Director daily, until the situation has stabilized. The reports may be sent, at the discretion of the Regional Supervisor, directly from the team control room by fax machine or personal computer with modum.
- c. The Regional Supervisor shall initiate contact with family members of any accident victims. Circumstances may warrant a collective "group" meeting with family members in large catastrophe investigations as the investigation gets underway and when the VOSH investigation is concluded.
- d. Periodic team progress meetings are important for the team leader and provide a way of keeping each person up to date on the progress of the investigation. Teams shall meet frequently to review findings, discuss possible theories of causation, and exchange information.
 - (1) All of the teams or as many representatives as possible shall meet once a week to provide an overview of each one's activities completed thus far as well as planned. (Specific times for meetings should be designated to facilitate planning of other inspection activities.)
 - (2) If inspection teams are divided into specialized areas (e.g., system safety, emergency response activity), a mechanism must be established so information can be exchanged.
 - (3) Each group shall review all requested documents and information which could be of importance to another and place a copy of the document in a folder kept for that purpose in the on-site VOSH command post. All other teams shall be made aware of the material in the folders.
- e. There are two aspects of media coverage that may be pertinent: providing information to the media, and obtaining information from the media. Regional Supervisors and Compliance Director shall be notified by investigation team members of the nature and extent of media contacts.
 - (1) It is reasonable to expect that reporters from radio, TV, and newspapers will make every effort to obtain all available information relative to an emergency situation.

- (2) To coordinate VOSH's response, only the Public Services and Information Director shall discuss the situation with reporters. Names of members of the investigation team shall not be given to the media.
- (3) If reporters call or contact either the Regional Office or individual team members, the reporters shall be referred to the Public Services and Information Director; no attempt shall be made to answer any questions related to either the emergency, the investigation, or the individual team members.
- (4) The Compliance Director shall periodically review media involvement with the office. Although the Public Services and Information Director will normally be the media contact, any Regional Office staff member may make the following statements:
 - (a) VOSH is investigating or is on the way to the scene;
 - (b) VOSH's purpose in investigating is to determine the cause of the incident and to determine whether any occupational safety or health standards have been violated;
 - (c) After citations, if any, have been delivered to the employer, VOSH will announce and provide copies of its findings; and
 - (d) Additional inquiries should be addressed to the Public Services and Information Director.
- (5) Newspapers and television may have photographs, video tapes or other visual representations of a site prior to or following an event that may be helpful to the investigation.
- (6) Every effort (including purchase) shall be made to secure visual representations from the media. It is possible, however, that photographs or newsreel tapes will not be released without subpoenas. The Public Services and Information Director can recommend approaches to obtaining information from the media and/or other sources.

11. PLAN OF INVESTIGATION.

The investigation team leaders shall develop and submit to the Regional Supervisor a written plan for investigating the accident and to determine its cause.

- a. The plan shall be submitted to the Regional Supervisor within one week. A written summary or synopsis of events to date and a description of the accident shall be included. Periodic updates shall be made to the plan as new information becomes available.
- b. The following issues shall be considered by the Team Leader or his/her designee when developing this plan, and in conducting the investigation:
 - (1) Site safety.

- (2) Inspection team strategies.
- (3) Use of consultants.
- (4) Collection of physical evidence.
- (5) Equipment and evidence testing.
- (6) Review of employer documentation.
- (7) Document control.
- (8) Media exchange.

12. EXTRA REGIONAL TECHNICAL ASSISTANCE.

It may be assumed that VOSH will need experts to serve both in determining the cause of the accident and testifying at any subsequent legal proceedings.

a. Expert assistance available from Federal OSHA includes:

- (1) Office of Construction and Engineering.

This office was formed, in part, to support investigations of large scale disasters by providing a capability to complete technical analysis and observations. Personnel of the office will be involved in any major construction accident and in accidents in other industries contingent upon discussion between the Regional Administrator, and the Director of the office or at the direction of the Assistant Secretary.

- (a) The personnel assigned to the investigation, joins the investigation team and serves under the general direction of the team leader while maintaining the capability to complete the objectives of the technical analysis of cause.
- (b) The Office of Construction and Engineering and its personnel do not become involved with any news media and make no periodic reports to the National Office in lieu of, or in addition to those provided by the Regional Administrator. In most cases the Office of Construction and Engineering will provide a formal report of the technical findings of the investigation. This report will be provided to the Regional Administrator for inclusion in the completed case file. Copies of the report will be released only after citations are issued and a determination is made that no trade secrets are revealed by its contents.
- (c) Since the observation of physical evidence is important and since this evidence should be examined before it is moved or disturbed, it is important that the Office of Construction and Engineering be involved in the investigation as soon as possible. The Director or Deputy Director can be reached on nights and weekends by dialing home phone numbers provided to the Assistant Secretary and the Regional Administrators.

(2) Directorate of Technical Support (DTS).

The Directorate of Technical Support serves as the principal source of agency expertise with respect to scientific, engineering and medical issues. A wide range of support activities can be requested from the DTS for OSHA.

- (a) On-site services provided by the Health Response Team (HRT) as well as specialists from other offices within the Directorate are available.
- (b) On-site laboratory services, occupational medicine, specialized equipment needs, chemical and professional engineering services and priority technical information retrieval are available to assist regional efforts.
- (c) The DTS has assisted in developing inspection protocols for investigating catastrophic releases, National Emphasis Programs for Safety and Health in the Chemical Industry, developing OSHA training programs and directives for system safety reviews, performing plant inspections, review of process and instrumentation diagrams, and researching literature for documentation to support proposed citations.

b. Expert assistance available from other State agencies include:

(1) Department of Emergency Services.

This department administers disaster preparedness programs and coordinates with the federal government and any public or private agency or entity in the administration and implementation of disaster preparedness programs.

(2) Division of Consolidated Laboratory Services.

This division provides certain laboratory services, including research and scientific investigations, for various agencies of the Commonwealth.

c. Where the circumstances of the significant event warrants prompt action, the Compliance Director, OLS Director or Deputy Commissioner shall, with the approval of the Commissioner, contact a private sector consultant, and request that a representative be sent to the accident site, if no qualified VOSH, OSHA National Office or NIOSH personnel is available.

- (1) The consultant and Regional Supervisor/ITL, with concurrence of the Compliance Director, shall agree on the scope of the contract which can be executed only after that agreement.
- (2) If the preliminary identification of consultants and preliminary contacts (as outlined in I.1.b.(3) of this directive) have been satisfactory, the companies will probably be willing to commit some time and resources based on verbal agreements.

- (3) Written contracts can be completed at a later time when the scope of work has been defined and costs can be better estimated.
- (4) The Compliance Director or Deputy Commissioner and consultants may only negotiate items such as cost, place, time, confidentiality, limitations on the availability of money, etc. The Compliance Director must be careful not to commit the state without approval by the Deputy Commissioner prior to contacting the consultant. Contractual arrangements shall be coordinated through the office of the Deputy Commissioner.

13. WITNESS INTERVIEW PROCEDURES.

Written witness statements shall be taken to obtain first-hand knowledge of conditions at the time of the accident.

- a. Witnesses will be identified as indicated in paragraph I.9.f.(1).
 - (1) All potential witnesses shall be identified as early as possible in the investigation, and interviews shall be conducted promptly as witnesses' ability to recall information and events may diminish with time.
 - (2) If a union is actively involved in the inspection, it can serve as a valuable resource by assisting in determining employees who might have knowledge of facts relative to the accident, for example, operations and/or maintenance records or histories of the process of equipment.
 - (3) The inspection will likely involve interviewing and reinterviewing all available witnesses, so their names, addresses, telephone numbers and how they can be contacted shall be carefully noted. The results of the interviews shall be shared among all team members.
- b. The primary employer contact, as outlined in paragraph I.8.c. of this instruction, will be utilized to schedule employee interviews.
 - (1) The union can assist in determining employees' schedules so that interviews can be scheduled.
 - (2) Subdividing the inspection team will allow team members to conduct more initial interviews in a short time.
 - (3) If reinterviews of witnesses are to be conducted, the team shall meet to develop a set of questions to be asked, then a team member will reinterview the key witnesses.
- c. The value of an interview often depends on the expertise of the interviewer and areas covered. Therefore, the following guidance is provided:
 - (1) All witness interviews shall be conducted by experienced CSHOs and/or FAT/CAT Investigation Team Members.
 - (2) CSHO shall exercise utmost discretion in conducting interviews of injured witnesses and

family members.

- (3) Witness interviews shall always be conducted in private unless the witness requests otherwise. Management/supervisory personnel and attorneys hired by the employer shall not be permitted to participate in interviews, even if the employee requests their presence. If an employee makes such a request, the team member shall immediately contact the Compliance Director, who shall, in turn, consult with the OLS Director to determine the best way to proceed. If management is reluctant to permit private interviews of employees on the site, the procedures in the FOM shall be followed.
- (4) The CSHO shall carefully question witnesses to solicit as much information as possible related to the accident, including processes, procedures, practices, training, maintenance, materials, previous accidents, and any near accidents.
- (5) Key witnesses may have to be reinterviewed as information is developed by the inspection team. During the initial phase of the investigation, it is more important to ask questions to determine general facts and to help identify key witnesses; particularly those who may have information related to the cause of the accident.
- (6) Prior to the interviews, the team leaders and members shall develop key, critical and screening questions to ask all witnesses. Such questions may be written down and provided to all interviewers.
 - (a) While a specific list of questions is highly desirable, it may be more practical in some cases to have only a list of the topics to be covered.
 - (b) This list shall be developed before any interviews are conducted and shall include:
 - 1 What is your name, address, telephone number, job, and employer?
 - 2 How long have you been in your present job? Have you ever seen any problem(s) like this before?
 - 3 Where were you at the time of the accident? What were you doing? Is that your normal job? Did you notice anything unusual?
 - 4 How did you discover the accident? Were you close enough to physically sense (see, hear, feel, smell) anything?
 - 5 See also paragraph I.9.f.(4) of this program directive.
- (7) If the inspection team is charged with evaluating emergency response, a CSHO shall interview employees about what they were instructed to do during an emergency in their building or on plant property to evaluate the employer's training and emergency procedures, and to determine whether employees were knowledgeable of those emergency procedures. Interviewers shall investigate how previous emergencies, if any, were handled and if there were any significant problems?

- d. Information developed in employee interviews must be documented for use in case file development.
 - (1) Interviews shall not be tape recorded as the only record of the interview. If a tape recorder is used, the compliance officer taking the statement shall also prepare a written statement and have the employee read and verify by signature the accuracy of the information.
 - (2) A summary of pertinent information from each witness shall be prepared and stored with each team.

14. BACKGROUND REVIEW.

A review of establishment history and process information can be of great value to the compliance officer conducting the investigation. The team members should review appropriate materials as time permits.

- a. An understanding of workplace terminology can be developed through a review of the safety and health policies and documents, operating manuals, standard operating procedures, start-up/shut-down procedures, training manuals for operators and job safety analyses.
 - (1) Such a review will help in understanding what job each employee performs and how he/she is supposed to perform these tasks and will eliminate unnecessary reinterviewing of witnesses.
 - (2) This review will also be particularly helpful if the actual work practices do not conform with established company policies or procedures.
- b. Early in the investigation other workplaces with similar or identical operations shall be identified.
 - (1) If any of these establishments are participants in VOSH Voluntary Protection Programs, an on-site visit and discussion shall be considered to further understand the process and operation as well as help identify common safety and health concerns to the industry.
 - (2) If the practice of the industry is of importance to document a possible general duty clause violation, other companies can be contacted by phone and asked to provide pertinent information.
 - (3) If these companies are reluctant to provide needed information, then the OLS Director, along with the Assistant Attorney General, need to be contacted to assist with obtaining the needed information.

15. DOCUMENT CONTROL.

During the inspection effort extensive documentation will be collected from the companies inspected. Control must be exercised from the onset to minimize confusion.

- a. All document requests shall be confirmed in writing and shall be provided to the person representing the employer. A dated copy of the request shall be kept in the case file and notations

made when the request was complied with.

- b. An inventory or log of the documents received shall be maintained. Each document shall be given a case file log number.
- c. Once a document is reviewed, a short summary shall be prepared and placed in the file. The summary may be a single line or several paragraphs.
- d. Periodically the documents request log shall be reviewed to ensure that the information is being provided in a timely manner. If critical documents have not been received and are needed, the OLS Director, along with the Assistant Attorney General need to be contacted to assist with obtaining the needed information.
- e. If any written or visual information is identified as "Confidential - Trade Secret", a secure place shall be established for the material. A locked file cabinet shall be used with a sign-in/sign-out log to ensure all documents are accounted for.

16. CLOSING CONFERENCE.

A closing conference shall not be conducted until the case has been reviewed and approved by the Regional Supervisor, Division Enforcement Director, OLS Office, the Deputy Commissioner, and the Commissioner.

- a. The closing conference shall be conducted by the team leaders and offered to both the employer and employee representatives. Outside agencies, insurance companies, media, etc., shall not be allowed to attend the closing conference without the permission of the Compliance Director and the employer.
- b. Each team leader shall explain the finding of the investigation with emphasis placed on apparent violations which may have precipitated the significant event and provide recommendations on how to prevent a similar incident.
- c. If a fatality is involved, the possibility of a manslaughter prosecution exists. DOLI's manslaughter policy procedures shall be reviewed to assist in determining whether there is a causal connection between an apparent violation of the VOSH standard and the death of an employee, VOSH FOM, Ch. IX, and VOSH Program Directive 02-068.

17. FINAL REPORT PREPARATION.

With a team effort, it becomes important to organize the group's effort so that once a majority of the inspection activities have been concluded, a single composite case file can be developed.

- a. Each team member shall maintain a journal of each day's activities covering things accomplished and notations of things to do.
 - (1) These journals, in a standard format designated by the ITL, shall be provided to the team leader each week.

- (2) These journals, with a little modification, can later be compiled into a chronological inspection narrative.
 - (3) The daily journal will also aid in citation write-up when the inspection is completed.
- b. As soon as the inspection team determines (based on interviews or observations) that a violative condition or potential violative condition exists, appropriate notations shall be entered on the journal and developed as the inspection progresses.
 - c. The team leader shall designate the CSHO(s) responsible for writing and assembling the final case file.
 - (1) Although each team and/or team member develops a partial case file, they must be assembled by designated individual into a complete product.
 - (2) If an egregious case is to be developed, it is particularly important to assign responsibility so that the CSHO(s) can coordinate with the OLS Office to ensure that all evidence and documentation necessary are collected. They shall also review Egregious Penalty Procedures, FOM, Ch. XX, to assist in asking appropriate questions during interviews or in seeking documentation. Similar precautions shall be taken for cases involving potential criminal violations.

18. DISCLOSURE.

VOSH's policy regarding disclosure of case file contents is set forth in Chapter II of the FOM.

- a. Any release of official case file information shall be conducted in accordance with those guidelines.
- b. If there is to be an official press release concerning the disaster investigation, the Public Services and Information Director, in consultation with the Compliance Director and the Deputy Commissioner or the Commissioner, shall draft one for approval prior to issuance of the citation(s).

19. PROGRAM EVALUATION.

It is VOSH's policy to evaluate the effectiveness of this directive each time its procedures are implemented. Therefore, the Team Leader shall submit a critique of the procedures outlined in this directive within 90 days of the completion of an investigation of a significant event. In addition, Regional Supervisors conducting such investigations shall submit a proposed investigation scenario for industry specific conditions which are not fully covered by this instruction. These scenarios will be reviewed for incorporation into this instruction, as appropriate.

APPENDIX A

Checklist for Investigation Procedures during a Significant Event of Potentially Catastrophic Consequence

A. Upon notification of a occurrence of "signification event":

1. Regional Supervisor contacts the Compliance Director or Deputy Commissioner to advise of the need to implement the procedures contained in this directive.
2. The Compliance Director reports the event to the Deputy Commissioner who, in turn, notifies the Commissioner and they assess the need for a team investigation of the incident.
3. Regional Supervisor or Compliance Director assembles and dispatches the investigation team. (See I.2.c.(2)(c))

B. ARRIVAL AT INCIDENT SCENE

1. VOSH representative shall establish contact with the employer and on-scene Incident Commander as soon as possible (see I.3.a.)
 - a. VOSH representative(s) include:
 - (1) Team Chief (Lead Inspector, Senior Safety Inspector or Senior Industrial Hygienist); and
 - (2) Special Fatality Investigator, if necessary
2. For significant events covered by the National Contingency Plan (NCP), the Regional Supervisor shall determine if emergency situation falls within the authority of another state agency or the federal government by consulting with (see I.5.b.):
 - a. Compliance Director and
 - b. OLS Director, if necessary
3. If significant event is covered by the NCP, VOSH representative shall also contact the federal on-scene coordinator and provide technical assistance.

C. DURING EMERGENCY RESPONSE ACTIVITIES (see I.3.6.)

1. Team Leader shall be available to provide assistance to responders through consultation with the on-scene Incident Commander or his designee.

D. COORDINATION OF VOSH ACTIVITIES WITH OTHER ON-SITE AUTHORITIES. (see I.5)

1. For significant event covered by NCP, see C.1, above.
2. Interagency Regional Response Team -- activated by the Environmental Protections Agency or Coast Guard.

3. All VOSH communication and coordination will go through:
 - a. VOSH's representative, designated by the Team Leader, to give technical assistance to Incident Command.
4. Only VOSH personnel trained in emergency response may engage in on-site consultation activities regarding respiratory protection.

E. Initial Phases of VOSH's response to a significant event. (see I.6)

1. Potential hazards which may be encountered include:
 - a. highly toxic atmospheric and surface contamination, e.g., carcinogens
 - b. confined spaces
 - c. potentially spontaneous generation of atmosphere - IDLH
2. Inspection duties (see I.5.d.(2))
 - a. All inspection duties must be performed by compliance officers who have successfully completed all VOSH required training courses (1910.120(q))
 - b. VOSH Team Leader shall determine if any of the prohibited entry categories may be encountered (see I.6.c.(1):

(NOTE: Notify Regional Supervisor if any of the above-referenced conditions exists or is likely to occur during course of inspection. Entry into hazardous area is prohibited unless approved by the Compliance Director.)

- c. No VOSH compliance officer prohibited from entering area where Level A protection required without approval of on-site coordinator.

3. Consultation

During the initial phase, consultation shall be made through the Incident Commander.

F. Team Inspection procedures.

1. Function of investigation team: to conduct VOSH investigation once emergency response phase of significant has ceased (see I.7.a. (2))
2. Investigation Team Leader (ITL) shall be designated. The ITL may be a Regional Supervisor Lead CSHO or Senior Industrial Hygienist from responsible Regional Office. (see I.7.b.)
 - a. Duties.
 - (1) Coordinate and direct investigation

- (2) Daily report of findings to Regional Supervisor and/or Compliance Director
- (3) Assimilate information from all sources and
- (4) Decide on utilization of resources
- (5) Conduct daily planning sessions with inspection team to apprise findings
- b. VOSH Site Safety Officer
 - (1) Responsible for advising the ITL on safety and security of VOSH personnel
 - (2) May serve as primary technical advisor to those engaged in controlling significant event
- c. Communications Officer/ Public Services and Information Director (see I.7.c.)
 - (1) Ensures confirmation of information to Compliance Director, Deputy Commissioner and the Commissioner
 - (2) Coordinates all site communications and prepares executive summaries during incident
- d. Site Control/Coordination (see I.8)
 - (1) Regional Supervisor and/or Team Leader shall ensure that certain pre-inspection actions are accomplished (see I.8.a.(1))
 - (2) Coordinate VOSH's activities with other responders to establish jurisdiction and ensure control of the site
 - (3) Other issues
 - (a) Contact person on large inspection site (see I.8.c.)
 - (b) Refusal of VOSH access to accident site (see I.8.d)
 - (c) VOSH authority regarding requiring employer to limit access or prohibit disturbance of worksite (see I.8.e)
 - (d) Preemption of VOSH jurisdiction. (see I.8.g.)

G. Plan of Investigation (see I.11)

- 1. Team leaders shall develop and submit to the Regional Supervisor within one (1) week a written plan for investigation the incident and to determine its cause.

2. Issues for consideration by Team Leader (see I.11.b.)

- (a) Site safety
- (b) Inspection team strategies
- (c) Use of Consultants
- (d) Collection of physical evidence
- (e) Equipment and evidence testing
- (f) Review of employer documentation
- (g) Document control
- (h) Media exchange